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6 Managers, Inc.

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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION
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11 In re

12 ESTYLE, INC., a Delaware corporation,
13 dba babystyle, Cadeau, and Cadeau
14 designs,

15 Debtor.

CASE NO. LA 08-13518-SB

Chapter: 11

LIMITED OBJECTION OF BELLEVUE
SQUARE MANAGERS, INC. TO MOTION
FOR ORDER APPROVING SALE
PROCEDURES AND BREAK-UP FEE IN
CONNECTION WITH THE SALE OF
ASSETS OF E-STYLE, INC. AND RELATED
ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED NONRESIDENTIAL REAL
PROPERTY LEASES AND EXECUTORY
CONTRACTS IN CONNECTION
THEREWITH

Hearing Date: July 8, 2008

Hearing Time: 2:00 p.m.

Place: U.S. Bankruptcy Court
Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

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24 Bellevue Square Managers, Inc. (“Bellevue Square”), the landlord for the Debtor’s
25 “babystyle” store located in Bellevue Square Mall in Bellevue, Washington hereby objects to the
26 Debtor’s Motion for Order Approving Sale Procedures and Break-Up Fee in Connection with the
27 Sale of Assets of E-Style, Inc. and Related Assumption and Assignment of Unexpired
28 Nonresidential Real Property Leases and Executory Contracts in Connection Therewith (the “Sale

1 Approval Motion”). Specifically, Bellevue Square objects to the inadequacy of (1) the Debtor’s
2 proposed cure payment and (2) the proposed adequate assurance of future performance required
3 under Sections 365(b)(1)(C) and (b)(3) of the Bankruptcy Code.

4 I. Cure Amount

5 The Debtor served a schedule of proposed cure amounts on June 26, 2008 showing on
6 “Exhibit 1” a current amount to Bellevue Square of \$2,482.31. Bellevue Square asserts that as of
7 July 2, 2008, the correct cure amount is at least \$29,836.02 (the “Landlord’s Cure Amount”).
8 This amount consists of the itemized items of \$21,582.43 (see Declaration of Douglas H. Polonis,
9 Exhibit A), plus attorneys fees of at least \$8,253.59. See Declaration of John S. Kaplan, Exs. A-
10 C. Attorneys’ fees are includable pursuant to Section 16.3 of the Lease. Kaplan Decl., Ex. D.
11 “While § 365(b)(1)(B) does not create an independent right to an award of attorneys’ fees, when
12 the terms of a lease provide for attorney fees and costs, and these are permitted by state law, a
13 landlord is entitled to them under 11 U.S.C. § 365(b)(1)(B) as a condition of a debtor’s
14 assumption of the lease.” In re America the Beautiful Dreamer, Inc., 2006 WL 2038646 (Bankr.
15 W.D. Wa. 2006) (citing In re Shangri-La, Inc., 167 F.3d 843, 848 (4th Cir. 1999); In re Westside
16 Print Works, Inc., 180 B.R. 557, 564 (9th Cir. BAP 1995); In re F&N Acquisition Corp., 152
17 B.R. 304, 308 (Bankr. W.D. Wa. 1993)). See also In re SNTL Corp., 380 B.R. 204 (9th Cir. BAP
18 2007) (holding that an unsecured creditor can recover postpetition attorneys’ fees if provided for
19 in the applicable contract).

20 Bellevue Square reserves the right to supplement its cure amount calculation to capture
21 any amounts owed up until the date of any actual assumption by the Debtor.

22 II. Adequate Assurance

23 Pursuant to Bankruptcy Code Section 365(b)(1)(C), the Debtor is required to provide
24 adequate assurance of future performance in order to assume a lease. Furthermore, because the
25 Lease between the Debtor and Bellevue Square is a “lease of real property in a shopping center”
26 as that term is used in Section 365(b)(3), the Debtor must specifically provide adequate
27 assurance:
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1 (A) of the source of rent and other consideration due under such lease, and in the
2 case of an assignment, that the financial condition and operating performance of
3 the proposed assignee and its guarantors, if any, shall be similar to the financial
4 condition and operating performance of the debtor and its guarantors, if any, as of
5 the time the debtor became the lessee under the lease;

6 (B) that any percentage rent due under such lease will not decline substantially;

7 (C) that assumption or assignment of such lease is subject to all the provisions
8 thereof, including (but not limited to) provisions such as a radius, location, use, or
9 exclusivity provision, and will not breach any such provision contained in any
10 other lease, financing agreement, or master agreement relating to such shopping
11 center; and

12 (D) that assumption or assignment of such lease will not disrupt any tenant mix or
13 balance in such shopping center.

14 11 U.S.C. § 365(b)(3).

15 The confidential "adequate assurance" package furnished by the Debtor on June 26 falls
16 woefully short of providing evidence of adequate assurance of the assignee's ability to perform
17 under the Lease. Specifically, neither subsections (A) or (B) of Section 365(b)(3) are satisfied.
18 Without getting into the details of the adequate assurance package, which will be addressed
19 subsequently in a separate objection under seal if necessary, the financial condition and operating
20 history of the assignee and proposed guarantor do not meet the necessary criteria, and Bellevue
21 Square would not rent to either entity if approached by them outside of the bankruptcy context.
22 Bellevue Square reserves all of its objections to the proposed adequate assurance.

23 DATED: July 2, 2008

24 PERKINS COIE LLP

25 By: 
26 Gabriel Liao

27 Attorneys for Bellevue Square Managers, Inc.